

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as RECEIVER of WASHINGTON MUTUAL BANK,

Plaintiff,

v.

KERRY K. KILLINGER, STEPHEN J. ROTELLA, DAVID C. SCHNEIDER, LINDA C. KILLINGER, and ESTHER T. ROTELLA,

Defendants.

) Case No.: 2:11-cv-00459-MJP
) RULE 26(c) CERTIFICATION/
) DECLARATION OF HENRY
) PIETRKOWSKI IN SUPPORT OF THE
) FDIC’S MOTION TO COMPEL
) DEFENDANTS ESTHER AND STEPHEN
) ROTELLA TO ANSWER
) JURISDICTIONAL DISCOVERY AND FOR
) EXTENSION OF TIME TO RESPOND TO
) ESTHER ROTELLA’S MOTION TO
) DISMISS
) **Noted on Motion Calendar:**
) **September 9, 2011**

I, the undersigned attorney, declare as follows:

1. I am one of the attorneys retained to represent the Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank (“FDIC”) in this matter. I am a partner at the Chicago office of the Reed Smith LLP law firm and am admitted *pro hac vice* for purposes of this case. I am submitting this certification pursuant to Federal Rule of Civil Procedure 26(c) in support of the FDIC’s Motion to Compel Defendants Esther and Stephen Rotella to Answer Jurisdictional Discovery and for Extension of Time to Respond to Esther Rotella’s Motion to Dismiss. I could and would testify competently to the facts set forth herein.

1 2. Counsel for the FDIC has conferred or attempted to confer in good faith with
2 counsel for Defendants Esther and Stephen Rotella in an effort to resolve the dispute raised by
3 their refusal to respond to the FDIC’s jurisdictional discovery requests. Despite these good faith
4 efforts, the parties are at an impasse on this issue, necessitating the Court’s involvement.

5 3. More specifically, on July 15, 2011, the FDIC served Esther Rotella with its First
6 Set of Jurisdictional Interrogatories and served Esther and Stephen Rotella with its First Set of
7 Jurisdictional Requests for Production. On August 15, 2011, Esther and Stephen Rotella
8 responded to these jurisdictional interrogatories and requests for production by uniformly
9 objecting to them on the basis that the FDIC had not made a “*prima facie* showing of
10 jurisdictional facts to withstand” Esther Rotella’s Rule 12(b)(2) motion to dismiss. The Rotellas
11 further objected to this discovery on the basis that it was “an improper request for merits
12 discovery” and that such discovery should be stayed pending resolution of the Rule 12(b)(2)
13 motion.

14 4. On August 16, 2011, I emailed counsel for the Rotellas asking them to schedule a
15 meet-and-confer conference to discuss their objections to the FDIC’s jurisdictional discovery.
16 After further email correspondence, we scheduled a meet-and-confer telephone conference for
17 the morning of August 19, 2011.

18 5. On August 19, 2011, counsel for the FDIC, Henry Pietrkowski and Barry Rosen,
19 met and conferred by phone with the Rotellas’ counsel, Deborah Stein. During this phone call, I
20 informed Ms. Stein that the correct standard in the Ninth Circuit for seeking jurisdictional
21 discovery is whether the plaintiff has a “colorable basis” for asserting personal jurisdiction over a
22 defendant. I further explained that the Court can take judicial notice of various public
23 documents, including certified copies of real estate and voter registration notices from the King
24 County Recorder’s Office and Elections Office. I said that these public documents, along with
25 the fact that Esther Rotella was married to Stephen Rotella while he worked for WaMu in Seattle
26 from January 2005 through September 2008, gave the FDIC a good faith “colorable basis” for
27 seeking the jurisdictional discovery from the Rotellas.

1 6. I also sent a follow-up email to Ms. Stein on August 19, 2011, enclosing case law
2 from district courts within the Ninth Circuit setting forth the “colorable basis” standard and
3 certified copies of the King County Recorder’s Office and Elections Office documents I had
4 mentioned on our phone call.

5 7. On August 22, 2011, I had a second meet-and-confer call with Ms. Stein during
6 which she informed me that despite our previous conversation and the case law I had sent her,
7 the Rotellas would not agree to provide the requested jurisdictional discovery and would not
8 agree to the FDIC’s request for an extension of time to respond to Esther Rotella’s motion to
9 dismiss. Ms. Stein based her denials on her contention that the FDIC had not pled sufficient
10 facts in its Complaint to justify the jurisdictional discovery it was seeking from the Rotellas.

11 8. As a result of this good faith impasse, the FDIC is filing its Motion to Compel
12 Defendants Esther and Stephen Rotella to Answer Jurisdictional Discovery and for Extension of
13 Time to Respond to Esther Rotella’s Motion to Dismiss.

14 9. Exhibit A attached hereto is a true and correct certified copy of a Statutory
15 Warranty Deed dated June 13, 2005, that I instructed the Karr Tuttle law firm to obtain from the
16 King County Recorder’s Office.

17 10. Exhibit B attached hereto is a true and correct certified copy of a Statutory
18 Warranty Deed dated May 5, 2009, that I instructed the Karr Tuttle law firm to obtain from the
19 King County Recorder’s Office.

20 11. Exhibit C attached hereto is a true and correct copy of a Lexis Nexis
21 comprehensive background report on Esther Rotella that a librarian at Reed Smith LLP obtained
22 for me from Lexis Nexis.

23 12. Exhibit D attached hereto is a true and correct copy of a Westlaw real estate
24 transaction record for the property at 1642 Federal Ave. E, Seattle, Washington, 98102, that a
25 librarian at Reed Smith LLP obtained for me from Westlaw.

1 13. Exhibit E attached hereto is a true and correct certified copy of Esther Rotella's
2 voter registration records, which I instructed the Karr Tuttle law firm to obtain from the King
3 County Elections Office.

4 14. Exhibit F attached hereto is a true and correct copy of Defendant Esther T.
5 Rotella's Objections to the FDIC's First Set of Jurisdictional Interrogatories, which I received by
6 email on August 15, 2011, from Sheila Rowden of Davis Wright Tremaine LLP.

7 15. Exhibit G attached hereto is a true and correct copy of Defendant Esther T.
8 Rotella and Stephen J. Rotella's Objections to the FDIC's First Set of Jurisdictional Requests for
9 Production, which I received by email on August 15, 2011, from Sheila Rowden of Davis Wright
10 Tremaine LLP.

11 16. Exhibit H attached hereto is a true and correct copy of a two-page unpublished
12 Order on Defendants' Motion to Dismiss in *Loya v. Starwood Hotels & Resorts et al.*, No. C06-
13 0815MJP (W.D. Wash. Nov. 30, 2006), which I personally obtained from Westlaw.

14 17. Exhibit I attached hereto is a true and correct copy of a two-page unpublished
15 Minute Order in *Zovo Lingerie Co. LLC v. DMH Enters. Inc.*, No. C08-393Z (W.D. Wash. July
16 16, 2008), which I personally obtained from Westlaw.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed at
18 Chicago, Illinois, this 22nd day of August 2011.

19
20 s/ Henry Pietrkowski
21
22
23
24
25
26
27
28